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GRAND JURY ROOM, Houston Feb. 20, 1862.

Hon. WILLIAM PINKNEY HILL,
Judge of the Confederate Court for
the Eastern District of Texas.

*Sir:*

I am requested by the unanimous voice of the Grand Jury of the Confederate Court, now in session, to return you their respects and highest compliments for the lucid as well as patriotic charge you delivered to them on Tuesday last. And further, as the sentiments and opinions of your Honor are so just, so timely, so honorable and so inspiring, in this day of war and trial, we respectfully ask of you a copy for publication.

In closing this request, allow the writer to subscribe himself, in the highest respect, Your humble and devoted friend,

JAS. W. BARNES, Foreman, &c.

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HOUSTON, February 20, 1862.

JAMES W. BARNES, Esq.,
Foreman of the Grand Jury:

*Sir:*

Your note in behalf of the Grand Jury, requesting for publication a copy of my *charge*, is received, and I submit herewith a copy, as requested, to be disposed of as the Grand Jury may think best for the public interests.

It is, and will always be to my mind, a cause of gratification, that the spirit and sentiments of my charge meet the approval of a body of citizens so intelligent, patriotic and honorable as your official body. I feel assured that in your hands the rights of the Government and the citizen alike are safe, and that from you the Government and the country will receive most valuable aid in the administration of the laws.

Be pleased to assure the Grand Jury of my high regards, and accept for yourself, dear sir, the assurance of my cordial esteem and friendship. With great respect,

Your obedient servant,

WM. PINKNEY HILL.

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GENTLEMEN OF THE GRAND JURY:

On this occasion, it is proper to notice the interesting fact, that yesterday, was the first day of the existence of the Permanent Government of the Confederate States of America. On Monday, the record of the Provisional Government was made up and closed forever. The facts and events of its origin and its career, beyond all precedence, beyond all comparison, constitute one the most interesting and instructive chapters in the history of human affairs. Contemplating its moral, intellectual and political elements, and the results they have combined to achieve, it has measured off, in one year, the most splendid segment of the cycle of time. But though its organization has ceased, it will not be a lost Pleiad from the political heavens. From its zenith in the Southern hemisphere, it will still shine, pointing the true course, and lighting up the way by which we are safely and triumphantly to pass through the sea of our troubles—now so vexed, and raging with the tempest.

On yesterday, the Congress of the Confederate States of America commenced its first session under the permanent Constitution. Ought we not to congratulate each other on this auspicious event, and to renew our faith and courage in the success and glory of our cause and country? Thus far we have stood alone. Thus far we have wrought our salvation, unaided by the resources of any other nation of people. Commencing without a dollar—the wealth and liberality of our own citizens have created and replenished our Treasury—and, for the first time in the history of nations, a new Government finds an unshaken basis of credit, and ample supplies for its wants, in the confidence, patriotism and resources of its people.

Commencing without an army, our own people, at the first call of their country, from all classes and pursuits, gathered in mighty hosts, and have formed and maintained an invincible army. We have asked no boon, and accepted no aid from any other Government or people. It is true we have asked admittance into the family of nations, not as a boon to us, but as a right, won by our own valor and wisdom. We have asked it with a power of argument and a prestige of facts, greater than were ever before required to open the door for the admission of a new and struggling Government into the national family. With ten millions of population—not surpassed for intelligence and moral worth, and living under a Constitution, the model of a free and popular Government, and inhabiting a vast territory, rich, varied, and delightful in soil and climate, with productions that annually furnish forth to millions in other lands the material of industry and trade, by which their hungry are fed and their naked are clothed, and all the element of their commerce and prosperity are *vitalized* and sustained, and which can be obtained from no other clime or people; with all this, we are yet unrecognized as a nation. But we have not asked for recognition, only because of our population, our territory, and our productions. We have maintained peace and security to our homes,

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we have kept in motion, harmoniously and effectively, all the machinery of Government and of civil and of social life; we have met our boastful enemy upon the border, and tried with him the bloody conclusions of battle. By deeds of valor, by victory, won along that border, from the Atlantic to the Missouri, by the display in the cabinet and in the field, of all those qualities which make a nation great and a people free and prosperous, we have become entitled to demand an equal place among the nations of the earth. It may be that foreign diplomacy and European complications have postponed this act of justice to us, until the events of yesterday and a few succeeding days shall put into operation our permanent Government. If so, this period is looked to, from the ends of the earth, to inaugurate new and important relations for us, and a new era in the business and commerce of the world.

It is true, that these considerations do not bear directly upon your practical duties as Grand Jurors. But as citizens you are deeply involved in the plot, the action and the results of this great drama. As the Grand Inquest of the nation for this District, and about to engage in the administration of one of the Departments of the Government, it is becoming for you, as citizens and in your official capacity, to consider the history, the prospects and the condition of your country, and that you realize your important connection with public affairs. The duties, devolved upon you at this term, are, principally, such as grow out of the legislation rendered necessary by the events of the war, and are directly referable to the policy of the Government in the conduct of the war. I entreat you to be *impressed* with the thought, that you are empanneled to-day—not in the ordinary course of judicial administration—but in obedience to a call made upon you by your country to assist her in the impending contest for life, freedom and property. The necessity, policy and consequences of the sequestration law, about which your inquiries will be mainly employed, are not to be considered by you in your official character. To you is assigned a delicate and responsible part in its administration and enforcement. I am truly desirous of aiding your investigations, by giving you all necessary instructions, and referring you, again, to the printed charge which will be handed to you, I will, in addition, invite your attention to the following clause in the instructions of the Attorney General:—

"All persons, (are alien enemies) who have a *domicil* within the States with which this Government is at war, no matter whether they be citizens or not." No doubt cases will come before you, in which the material inquiry will be, whether certain persons are *alien enemies*. To determine this inquiry properly, it will become essential to find the *domicil* of such persons. To do this, you must be instructed in the true definition of the term *domicil*. In all codes of law, ancient and modern, and by many law writers of eminent ability, this *term* has been defined, but there is no enumeration of the ingredients which constitute *domicil*, in which there is universal agreement; and, in some respects, there are material differences in the definition.

There are, however, a few propositions which are generally accepted as *postulates*, and are not required to be supported by reasoning or by authority.

Every person must have a domicil somewhere. A person can have but one domicil at one and the same time. *Fact* and *intent* must concur to constitute domicil—that is to say—*residence* and the *intention* of making it the home of the party.

Applying these *tests* to each particular case, the questions they involve may, most generally, be correctly solved.

A simple and comprehensive definition is as follows: "That place is properly the *domicil* of a person in which his habitation or residence is fixed, without any present intention of removing therefrom."

In the Roman law, is the following admirable definition: "There is no doubt that every person has his domicil in that place which he makes his family residence, and principal place of his business; from which he is not about to depart unless some business requires; when he leaves it he deems himself a wanderer; and when he returns to it he deems himself no longer abroad." It is said that "it is sometimes a matter of no small difficulty to decide in what place a person has his true or proper domicil. His residence is often of a very equivocal nature; and his intention as to that residence is often still more obscure. Both are sometimes to be gathered from slight circumstances of mere presumption, and from equivocal and conflicting acts." All the facts and circumstance tending to show that a man has his home or domicil in one place, and all the facts and circumstances tending to establish it in another place, are to be considered and weighed against each other—thus involving a comparison of proofs. But there are some facts which the law deems decisive unless controlled and counteracted by other facts, of more power and effect. To illustrate this:—The place where a person lives, is *prima facie*, to be taken as his domicil. Or, the place where a married man's family resides is generally to be deemed his domicil. But this presumption may be counteracted by showing that the residence of the party or of his family, at a particular place, is only temporary, for transient business purposes and objects, or for pleasure, or for health, and that, therefore, such place is not his domicil.

Again: If a person leaves his former home, and takes up his abode at another place, it raises the presumption of an abandonment of the old domicil. But if it is proven that this absence is only for temporary purposes, but with an intention to return when the purposes of this absence are accomplished, there is no abandonment of the old domicil.

Another illustration: A person may leave his old domicil and remove to another place for temporary purposes, with the *bona fide* intention of returning, but he may afterwards change his mind and determine to remain at his new place of inhabitancy—thus engrafting upon an inhabitancy originally taken for special and temporary purposes, an intention of permanent residence. In such a case the domicil is fixed at the new place of residence as soon as the intention of returning is abandoned.

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Again: To preserve the domicil, a person leaving it must have a persistent, certain and definite and *continuing* intention of returning to it For, if he actually removes to another place, with an intention to remain there an indefinite time, and as a place of fixed *present* domicil, with only a floating, contingent intention to return at some future and indefinite period, then his change of domicil is complete. A person may intend to remove and acquire a new domicil, but unless he actually removes, his intention has no effect. On the contrary, his actual removal, as explained, without the intention of abandoning the old and acquiring the new domicil, is equally without effect. The domicil of the husband is the domicil of the wife, and that of the parents is the domicil of the infant children.

With these principles and rules of law to enlighten the path of inquiry, you will, I trust, be able to solve the complications of each case that may come before you, and to arrive at just and true results.

The *postulate* that a person can have but one domicil at one and the same time, acquires new and peculiar point and force, from the existing war between the Confederate and United States. No person can have a domicil in the Confederate States and also in the United States. He that is not for us is against us. There must be no mystery or doubt *now* about any man's domicil or allegiance. When the first gun sounded to the startled world, the tremendous fact that the Union was dissolved—that the argument of more than thirty years was exhausted—and that States, formerly in union and peace, were now separate nations, about to engage in the terrible conflicts of war, it was the duty of every man to stand to his arms, on one or the other side. At once, the law drew between the people of the two nations a line of division, and established for each the status of hostility. After war was inaugurated, no person could continue in the United States unless kept there by constraint, or his continuance there was involuntary, and avoid at least the suspicion of having his domicil in the United States, and of being an alien enemy to the Confederate States. If he desired to establish or to retain his domicil or citizenship here, and to prevent the status of alien enemy being charged against him, it was his duty, as soon as he reasonably could do so, to come into the Confederate States and bear his share of the burdens, and take his chances of the perils of this war. The point of time at which your inquiries must begin is fixed by the law, and is the 21st of May, 1861. All who were alien enemies at that date or since, having property or debts owing to them in the Confederate States, are within the provisions of the Sequestration Law. Does it come to your knowledge that a person was, under the rules laid down, domiciliated in the United States on the 21st of May last, or since, and has property or debts within your jurisdiction? It is your duty to inquire into and report as to such property or debts. If he continued there for private business, pleasure or convenience, without the consent of the Confederate Government, or to prevent the confiscation of his property in the United States, or in any manner to claim the protection and benefit of its laws,

the presumption of domicil there and of being an alien enemy is certainly strong against him. Many facts which, in time of peace, would counteract the presumption of domicil, lose much of their force in time of war, because of the new relations assumed and the new and imperative duties imposed by a state of war. In time of peace a person may go where he pleases—consult his convenience or his pleasure—tarry long or short in foreign lands, and may easily show that all this is consistent with a continuing domicil and citizenship here. But if, without the consent of his Government, in time of war, when the country requires every man to do his duty, he voluntarily remains away from his post, and remains, too, in the country of the enemy, he may find it exceedingly difficult to explain why he shall not be dealt with as an alien enemy. To say of a person residing in the United States, that he is friendly to our cause and wishes our success, does not relieve him from the character of an alien enemy. To say that he is not a citizen of the United States, but only residing there, will not change this legal status. He may be a foreigner—say an Englishman or Frenchman—who never intends to claim citizenship there, but if he is *domiciled* in the United States, he is an alien enemy, and his property in the Confederate States is subject to sequestration.

It may be that some persons are domiciled in the United States who are earnest, ardent well-wishers to us, and would rejoice to know that we had triumphed in the contest, and who may have a fixed or a floating intention to remove to the Confederate States when the war is ended, and the time of singing birds has come again; and if this be so, and it was all proven conclusively, it would still leave them in the condition of alien enemies.

Still another class of persons may come to your knowledge: that of those who were here on the 21st of May last, but who subsequently abandoned the Confederate States and removed their domicil to the United States. If such there are, they are not the less alien enemies, because they were once citizens of the Confederate States.

If you find property and debts within your jurisdiction belonging to persons who were, on the 21st of May last, alien enemies according to the rules and principles before stated, but who have since that time removed to the Confederate States, their property is subject to your inquiry and report; and the opportunity will be given them to show why judgment of sequestration shall not be rendered against their property. * * * * And in this connection, it is well to remark, that if any person was domiciliated in the United States on the 21st of May last, or since that time, and was then an alien enemy, and afterwards removed into the Confederate States, for the purpose of thereby shleiding his property, from the consequence of being an alien enemy, such removal does not protect his property from sequestration.

It is to be observed, that the status of the person, as to his domicil is the test of the liability of his property to sequestration. He must be, not only an *enemy*, but an *alien* enemy. The property of a domes-

tic or citizen enemy, if any such there be, is not by reason of his hostility to the Government, subject to sequestration so long as he is domiciliated, or has his home among us. He may be guilty of treason, and punished for it, but his property is not therefor to be confiscated under this law. The abode or domicil of the party determines the question of *alienage*, and the law establishes his character as an *enemy*, as a corollary from the fact of his being an alien resident in the United States. By the law of nations, it is a necessary but terrible consequence of the war, that every man, woman and child in the United States is the enemy of every man, woman and child in the Confederate States. Fix his domicil there, and friendship, affection and kinship can interpose no shield against this law. If you cannot fix the domicil there, the property is safe from the law.

But, gentlemen, while you must not spare alien enemies—while their property must be sequestrated for the beneficent and just purposes of the law, you are instructed to exercise great care and caution in your inquiries and conclusions as to the fact of alien enemyship in every case where doubts are to be solved. In some cases there may be conflicting facts; a good citizen may have become entangled in a net of circumstances, that, without due investigation, would fix upon him the infamy of infidelity to his country; but when explained, would leave his patriotism untarnished. The citizen is as much entitled to exemption from the operation of the law, as is an alien enemy to be pursued with all the energy and effect of its provisions.

It is important to consider, that the mere fact of being in the United States on the 21st of May last, or since that time, does not in itself constitute a person an alien enemy. But in addition to that, the intention to remain there must exist. In ascertaining the *intention* of the party as to his continuing permanently there, you may give much weight to the consideration that he continues there voluntarily and without constraint, when it is the duty of every citizen of the Confederate States to be at home; but in every case you ought to consider every fact and circumstance that may come to your knowledge, as well for him as against him; and from the whole case, you must decide whether his *domicil* is in the United States, or in the Confederate States. Having determined this question, if against him, the law makes him an alien enemy, and you will proceed to inquire into and report his property. Length of residence in the United States is not material, except as a fact tending to show the *intention* of the party. We more readily infer an intention of domiciliation from a long continued than from a short residence. We more readily infer it in time of war, than in time of peace. An inhabitancy of one day, coupled with the intention to make it the home of the party, even for an indefinite time, at once fixes the domicil.

Of course, as to that large class of cases, in which there is no doubt or question as to the domicil of a party, you can have no difficulty.

W. P. HILL.

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